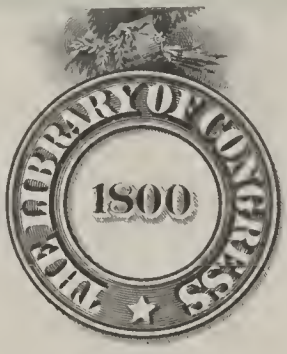
HOW TO LOCATE AND HOLD MINING CLAIMS.

By
J. G. WATTS.
BOISE, IDAHO.



HOW TO LOCATE

AND HOLD

MINING CLAIMS.

FOR PROSPECTORS AND
MINE OWNERS.

BY

J. G. WATTS,

BOISE, IDAHO.

1902

Press of Capital News Printing Co., Boise, Ida.

PREFACE.

For several years past the author has been impressed with the fact that the prospector and miner needed a practical guide, written in a style that could be readily understood, stripped of legal verbiage, printed in plain large type that could be read by candle light, and bound in a size and style that would be convenient to carry in the pocket.

An attempt has been made in this little volume to supply this need. The various steps necessary to perfect and hold a mining claim are discussed in the order in which they are to be taken and the prospector and miner are advised what to do and when and how to do it.

The statute laws of the several mining states as well as the federal statutes define the method of making locations and the requirements as to annual assessment work. Very few prospectors have the time or opportunity to study these statutes and the constructions which the courts have placed upon them, consequently their knowledge as to what is meant by "natural

object," "permanent monument," the manner of referring to them, where they must be located, where and how the annual assessment work may be done, what constitutes a valid notice, what is a good discovery, what may be done to save his claim from forfeiture, and many other questions connected with the locating and holding of mining claims, are but little understood. It is the object of this work to strip all these questions of their legal and technical character and explain them in a concise and intelligible manner.

No attempt is made to discuss the process of obtaining patents to mining claims, the possessory title only is here treated.

If this little book shall prove of value to the prospector and miner in his work of perfecting and holding such title, it will have accomplished its purpose.

Dated February 12, 1902.

THE AUTHOR.

SYNOPSIS.

CHAPTER I.

CHAPTER II.

CHAPTER III.

CHAPTER IV.

CHAPTER V.

CHAPTER VI.

CHAPTER VII.

CHAPTER VIII.

CHAPTER IX.

CHAPTER X.

FORMS.

CHAPTER I.

MINERAL LANDS.

The government of the United States has opened the public mineral lands to exploration for the precious metals, and grants to prospectors the right to extract and possess the mineral within certain prescribed limits, and to occupy and purchase the land in which they are found under regulations prescribed by law and according to the local customs or rules of miners in the several mining districts.

So long as they comply with the laws of the United States, and with State and local regulations not in conflict with the laws of the United States, they shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes, and ledges throughout their entire depth, the tops or apexes of which lie inside of such surface lines extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side lines of such surface locations.

But their right of possession of such veins or ledges is confined to that portion which lies between vertical planes drawn downward through the end lines of their locations.

The right to thus explore, occupy and purchase mineral lands is limited to citizens of the United States, or those who have declared their intention to become such.

As the locator of a mining claim is entitled to the exclusive possession and enjoyment of all the surface ground included within his boundaries, it is important that the prospector should know, before he begins his search for the precious metals, whether or not the ground he is prospecting is already appropriated; for, having been once located, the land, to the extent of the location, is withdrawn from the public domain, and is not open to exploration or purchase so long as the locator, or his grantees, comply with the law and the local rules, customs and regulations of the mining district. If he forfeits his claim by failure to perform the annual labor or make the amount of improvements required, or if he abandons his claim, leaves it with no intention of returning to it again, then the land covered by his location reverts to the United States, becomes again open to exploration and occupation and may be located the same as though no previous location had ever been made thereon.

The statute law of Arizona, Montana, Nevada, New Mexico, Idaho, Colorado and Washington allows the locator of a mining claim ninety, Oregon, South Dakota and Wyoming sixty, and Utah thirty days after making his discovery or posting his preliminary notice, in which to file for record his location notice. This being the law, it is quite impossible for a prospector to determine, by a search of the records in the recorder's office, whether or not the ground which he desires to prospect is open to location. He can only determine this fact by going upon the ground and making a careful examination of the surface markings.

Having determined this question and found that the ground he desires to prospect is unoccupied, he begins his search for precious metals. His first step, and perhaps the most vital one in the series of steps required of him in perfecting his location, is the discovery of mineral.

CHAPTER II.

DISCOVERY.

This and the three succeeding chapters will be devoted to lode claims.

In all legislation and by all mining regulations and rules, discovery and appropriation are recognized as the sources of title to mining claims (1). It can be readily seen by the prospector that a discovery of mineral is of the utmost importance, for, without such discovery all steps taken by him in perfecting his location will be of no avail. It matters not how careful he may be in selecting and posting stakes of the proper size, how correct in describing the courses and distances of his boundaries, how exact in his reference to some natural object or permanent monument, if he has failed to make a valid discovery of mineral he has no title, because his right to appropriate the land originates with the discovery of something to appropriate, to-wit, the mineral.

The law does not require any particular degree of richness to support a quartz location. It only requires that there shall be sufficient indication to justify a reasonably prudent person in expending his time and money in its development (2). It leaves the prospector to judge whether the indications are sufficient (3), if

he is willing to spend his time and money in developing the property, then the presumption is, that there is mineral in paying quantities.

The discovery must be of ore or mineralized rock in place, in a defined vein, or in continuous vein matter. The finding of float or detached pieces of ore is not considered a sufficient discovery upon which to base a location. It makes no difference whether the ore outcrops on the surface, or whether it is found by sinking a shaft, or running a tunnel, but it must be in place, and the discovery of the vein or lode must be within the limits of the claim as afterwards located. The prospector cannot make a discovery of ore and then locate his claim so as to leave the discovery outside of his lines. It necessarily follows, that every claim must rest upon its own discovery; in other words, one discovery will not suffice for two locations. The practice of locating extensions on the original discovery claim, without making a discovery on the extension, is without warrant of law, and subjects the prospector who has so located to the danger of losing his claim to the first person who enters upon it and makes a valid discovery.

A prospector can hold to the extent of his claim if he remains in actual possession while he is prosecuting a search for mineral before the discovery of the same in place; but if he stands

by and permits another to sink a shaft or otherwise search for mineral within his boundary, and the latter first discovers the mineral, a location by the latter will take precedence over his claim (4).

Veins or lodes are lines or aggregations of metal embodied in quartz or other rock in place; these words are used as embracing a more or less continuous body of mineral lying within well defined boundaries of other rock in the mass within which it is found (5). There must be rock, clay, or earth so colored or decomposed by the mineral element as to mark and distinguish it from the inclosing country (6). If a discovery is made in a vein or lode as here defined, then the prospector has such a discovery as will support a location. The central idea of a mining claim is that there must be a discovered lode within it, the locus of which on its onward course or strike is embraced by the boundaries of the claim (7).

The locator must sink his discovery shaft upon territory which he has a right to appropriate. If he sinks it upon ground embraced in a prior, valid and subsisting location, though with the consent of the owners thereof, he acquires no rights by his discovery (8).

The prospector should be careful in making his discovery to find the top or apex of the vein, for the top or apex must be within his

boundaries to entitle him to the vein or lode.

Remember that no rights can be acquired under the statute by location before the discovery of a vein or lode within the limits of the claim located (9).

It is true that some cases have held that a valid discovery made after location and before other rights have accrued will make the location a valid one, yet the general statement is true that a discovery is actually necessary to initiate title, and a location, void at the time it was made, because of no discovery, continues void, and is not cured by a subsequent discovery if in the meantime other persons have, by a valid discovery, acquired rights to the ground. This is because the discovery cannot relate back and make such location valid from date of location (10). It has also been held that it is not necessary that mineral be discovered in the discovery shaft if it is discovered within the limits of the claim before adverse rights attach (11). The contrary has been held by the Circuit Court of the United States (12). This last is under the Colorado statute.

These extreme cases are cited, not for the purpose of encouraging any prospector to be lax or careless in making his discovery, but that he may protect his location against the claims of trespassers. The only safe rule for him to

follow, is to initiate his title by making a valid discovery, for the party who first discovers a vein and posts his discovery notice, following such acts with the remaining acts necessary to a valid location within the time prescribed by law, is entitled to the vein as against a subsequent discoverer who succeeds in first completing all the requisite acts of location. (13).

(1) O'Reilly v. Campbell, 116 U. S. 418.
Erhardt v. Boaro, 113 U. S. 537.

(2) Muldrick v. Brown, (Ore.) 61 Pac. 428.
Railway Co. v. Migeon, 68 Fed. 811.
Harrington v. Chambers, (Utah) 1 Pac. 362.
Burke v. McDonald, 2 Idaho 1022.

(3) Burke v. McDonald, 2 Idaho 1022.
Harrington v. Chambers, (Utah) 1 Pac. 375.
Ellers v. Boatman, 4 Sup. Ct. Rep. 432.
McShane v. Kenkle, (Mont.) 44 Pac. 979.

(4) Crossman v. Pendery, 2 McCrary 139, 8 Fed. 693.

(5) United States v. Iron Silver Min. Co. 128 U. S. 673
Iron Silver Min. Co. v. Cheesman, 116 U. S. 529.

(6) Burke v. McDonald, 2 Idaho 1022.

(7) Wolfley v. Lebanon M. Co. of N. Y., 4 Colo. 112.

(8) Armstrong v. Lower, 6 Colo. 393.

(9) North Noonday Min. Co. v. Orient Min. Co., 1 Fed. 522.
Jupiter Min. Co. v. Bodie Con. Min. Co., 11 Fed. 66.
Burke v. McDonald, 2 Idaho, 1022.

(10) Upton v. Larkin, (Mont.) 6 Pac. 66.

(11) Wight v. Tabor, 2 L. D. 738.
Harrington v. Chambers, 111 U. S. 350.

(12) Van Zandt v. Argentine Min. Co., 8 Fed. 725.

(13) Pelican & Dives M. Co. v. Snodgrass, 9 Colo. 339.

CHAPTER III.

LOCATION.

Having made a valid discovery of ore or mineral in place as indicated in the preceding chapter, the prospector should next take such steps as will secure to him the exclusive possession and enjoyment of the fruits of his discovery.

He may appropriate to his own use fifteen hundred linear feet of the vein, lode or ledge so discovered, and in addition thereto may also take and hold a certain number of feet of surface ground on each side of the center of the vein, lode, or ledge, for the convenient working thereof. The United States statutes provide that the amount he is entitled to take cannot exceed three hundred feet on each side of the center of the lode or vein, that this amount may be reduced by the state or territorial legislatures, or by the local rules and regulations of miners, but that the minimum must not be less than twenty-five feet on each side.

All the mining States and Territories with the exception of Colorado, allow the full width of three hundred feet on each side of the

center of the vein or lode. In Wyoming the mining district may fix the width, but not at less than one hundred and fifty feet on each side. In Colorado the width is fixed at one hundred and fifty feet, except that in Gilpin, Clear Creek, Boulder and Summit Counties, only seventy-five feet is allowed, but any county may at a general election determine upon a greater or less width, not exceeding, however, 300 feet. While the prospector is entitled to take 1500 feet along the vein, lode or ledge, and the amount fixed by the law of the State in which he is prospecting, on each side of the center of the vein, lode or ledge, he is not required to take a full claim. The statute fixes the maximum that he is entitled to take; he may appropriate as much less, both in length and width as he sees fit.

Remember that the law does not fix the width of a mining claim at 600 feet, the provision is, 300 feet on each side of the center of the vein or lode. Under no circumstances is the prospector authorized to go beyond this limit on either side. The two sides need not be of the same width, but the wider one must not exceed the limit fixed by law. He cannot locate his claim so as to have 400 feet on one side of the vein and 200 on the other, for as stated above, the law does not fix the width of a claim, but does fix the extreme limit that

the prospector is entitled to take on each side of the vein or lode.

The law provides a means by which the prospector may appropriate the vein or lode which he has discovered and the surface ground on each side of the center thereof, to-wit: By making a location.

Certain steps are necessary on the part of the prospector in order to make a valid location of his ground, and these steps will be stated and discussed in the order in which they are to be taken.

1. Preliminary Stake and Notice.

At the time of making the discovery of the vein or lode, the prospector, or locator as he may now be called, must erect a monument at the place of discovery, upon which he must place his name, the name of the claim, the date of discovery, and the distance claimed along the vein each way from such monument.

This statement of the first step to be taken in making a location is taken from the laws of Idaho (1). The other mining States and Territories have no similar provision, yet all of them recognize such a notice as good to hold the ledge for a reasonable time. As to what is a reasonable time, may be inferred by the statutes of the several States defining when the

boundaries shall be marked and the location notice posted. In Oregon, Montana, New Mexico, Utah and Nevada the location notice is required to be posted at the date of discovery, which of course is construed by the courts to mean within a reasonable time allowed to determine the strike of the ledge.

In Arizona, Colorado and Washington, the locator has ninety days and in South Dakota and Wyoming sixty days after discovery to file for record his location certificate, and the statute of each of these States and the Territory provide that before filing his location certificate he shall mark the boundaries of his claim and post his notice of location, so it would seem that he would have all this time, ninety or sixty days, as the case may be, under his preliminary notice. In Idaho only ten days are allowed.

The object of this preliminary monument and notice is to secure to the prospector his right to the vein or lode, together with the surface ground allowed by law, for a limited length of time, that he may by development work on the vein or lode, or by such other means as he may deem best, determine the true course or strike of his ledge.

After he has erected his monument and posted his notice, no one can interfere with his right to 1500 feet of the ledge, or such other

less distance as he may claim in his notice, during the time between the posting of the notice and the time allowed for taking the next step toward perfecting his location. During this time he has the exclusive right to prospect the ledge within the limits of his claim.

It has been held by the courts of the United States and in those States where no preliminary notice is required, that the prospector is entitled to a reasonable length of time after making his discovery, in which to prospect his vein or lode and determine its true course or strike, and the courts have protected his right to the ledge for a reasonable time.

Although the statutes of the United States do not require the posting of a notice, yet the General Land Office recommends that the prospector post a notice at his point of discovery, so that others coming upon the ground for the purpose of prospecting may know the extent of his claim.

This monument, with the notice thereon, must be erected at the time of making the discovery. The object of this provision is twofold: *First,* to protect the prospector against the interference of others; *Second,* to notify other prospectors who may come that way of the extent of his claims so that they may guard against trespassing on his rights and know what ground is still open to exploration.

Should he neglect to erect his monument and post his notice, another prospector, ignorant of the fact that he has made a valid discovery, might discover the ledge at some other nearby point, post his notice and thus deprive the first prospector of the fruits of his labor.

The monument may be of any such material or form as will readily give notice, such as stones, trees or post; the laws of Idaho provide that it must be at least four feet high above the ground, and if it be a tree or post it must be at least four inches square or in diameter, and if a tree it must be so hewn as to readily attract attention. While the other States do not define what shall constitute a discovery monument, it is to be presumed that the same character of stake is required as those to be used in marking the boundaries, which subject will be discussed under the next head.

This monument must be erected at the place of discovery, The statute makes the place of discovery the starting point from which to measure the distance claimed along the ledge in either direction and properly requires the notice of claim to be posted at this point. If the discovery is made in a tunnel the monument should be erected on the surface directly over the point of discovery, for the presumption is that the top or apex of the ledge is above the point of discovery in the tunnel, and that

by sinking from the surface the apex would be found; moreover, the erection of the monument and the posting of the notice in the tunnel would not impart notice to others; the monument should always be erected on the surface.

Having erected the monument, there must be placed thereon: *First,* the name of the locator; *Second,* the name of the claim; *Third,* the date of the discovery, and *Fourth,* the distance claimed along the vein each way from such monument.

This notice is only a temporary one, and as it will be taken down in a few days and the permanent location notice substituted in its place, it is not necessary that any great care should be exercised in protecting it from the weather. It should be posted in a conspicuous place on the monument so that it can be easily seen and read. No particular form is required, it is only necessary that the notice contains the four essentials above mentioned.

The following is suggested as a short and convenient form:

NOTICE OF DISCOVERY.

I, *John Doe,* having this *15th* day of *November, 1901,* discovered at this point, a vein or lode of quartz in place, bearing *gold* and *silver* and other precious metals, do hereby claim and

locate 1500 feet on this vein, lode or ledge under the name of the *Diana* lode claim, to-wit: *One thousand* feet in a *northerly* direction and *five hundred* feet in a *southerly* direction from this stake or monument and notice, together with *three* hundred feet on each side of the center of said vein, lode or ledge.

Date of posting, *Nov. 15th, 1901.*

JOHN DOE,
Locator.

As before stated, this is only a temporary notice, intended to protect the rights of the prospector during the time allowed by law for him to determine the true course or strike of his ledge. After he has posted his permanent location notice, this temporary notice has no further services to perform, and may be taken down. The law does not require it to be recorded, and it is of no value except in case of a conflict over the title to the ground, where the adverse party claims by virtue of a discovery made between the date of its posting and the date of posting the permanent location notice.

The prospector is urged to preserve this notice, and if it is possible to find witnesses to its posting, have them sign it as witnesses at the time of posting. If a contest, such as is mentioned above, arises, the notice, with the sig-

natures of witnesses, is the best evidence that the preliminary step as required by law was taken.

The words "northerly" and "southerly" used in the above form do not mean directly north and south, but they are held to include, until the boundaries of the claim are definitely located by the erection of monuments, a line drawn from the place of discovery to any point between north 45 degrees east and north 45 degrees west in the northerly direction, and likewise any point between south 45 degrees east and south 45 degrees west in the southerly direction (2). And the statute of Idaho has gone further even than this, for it provides that at the time of marking the boundaries the locator may mark them in any direction that will not interfere with rights or claims existing prior to his discovery (3).

The prospector or locator should not post his center end stakes at the time of erecting his temporary monument and posting his notice unless he knows definitely the course or strike of his ledge, for by so doing, he is giving a definite notice to subsequent locators of the center line that he intends to claim, and he cannot thereafter, during the time prescribed by law for perfecting his location, change the course to the prejudice of intervening rights (4).

2. Marking the Boundaries.

Within ten days from the date of discovery he must mark the boundaries of his claim by establishing at each corner thereof and at any angle in the side lines a monument marked with the name of the claim and the corner or angle it represents. When from any cause, a monument cannot be safely planted at the true corner or angle, it may be placed as near thereto as practicable, and so marked as to indicate the place of such corner or angle.

Monuments may be made of any such material or form as will readily give notice, and when of posts or trees, they must be hewn and marked upon the side facing towards the discovery, and must be at least four inches square or in diameter. Monuments must be at least four feet high above the ground and trees must be so hewn as to readily attract attention.

This is the statute law of Idaho (5). Most of the mining States and Territories have similar statutes. The statutes of the United States provide that the location must be distinctly marked on the ground so that the boundaries can be readily traced (6). But, as remarked above, most of the mining States have defined by statutes how the location shall be marked on the ground, and the requirements of the

State or Territorial law in this respect must be followed.

Within ten days from the date of discovery he must mark the boundaries of his claim. Colorado, Arizona and Washington fix the time at ninety days, South Dakota and Wyoming at sixty days, Utah and Oregon at thirty days, New Mexico 120 days..

It is very important that the boundaries of the claim should be marked within the time required by law, for a neglect on the part of the locator to perfect his location, or at least to proceed with due diligence to perfect it within the time, raises a presumption of abandonment, and other prospectors have a right to assume that he does not intend to go any further with his location. In fact, it has been held that a failure to mark the boundaries and post the notice within the time allowed by law leaves the ground in the same condition as if nothing had ever been done, and it is open to location by any person who may first perfect his location as required by law (7). But it will not inure to the benefit of any person who initiated his right or attempted to locate during the ten days allowed by law before marking the boundaries (8).

The failure to mark the location as required by law is fatal to its validity.

The fact that it is difficult to get to a cor-

ner to erect a stake, does not excuse a failure to set proper stakes. The statutes of Idaho, Nevada, Utah and Wyoming provide that in such case a post or monument may be placed as near the real corner or angle as practicable and marked so as to indicate the place of such corner or angle, and such right would seem to exist in all the states. It is only where the actual corner or angle cannot be staked with safety, that witness stakes may be used, for example, when the corner or angle is on the side of a precipitous mountain where the locator could not go without great danger, or in the channel of a stream.

Every claim, to constitute a valid location, should have two end lines and two side lines. The end lines are those that cross or cut the vein or lode, and the side lines run parallel with the vein or lode. It makes no difference what the locator intended as his end lines or side lines, his end lines are those that cross or cut the vein or lode (9). If he has by mistake located his claim crosswise of the vein then his side lines become his end lines and instead of his having 1500 feet on the vein or lode he has only 600 feet, or less, if his claim is less than 600 feet in width. It is, therefore, very important that the true course or strike of the ledge should be determined before making the permanent location, for having once set the stakes

and marked the boundaries, no change can be made that will in any manner interfere with the rights of others.

Another important matter to bear in mind is, that the end lines must be parallel. It is through and by virtue of parallel end lines that the locator secures the right to follow his vein on the dip beyond his side lines. The law contemplates that he shall never take more of the ledge on the dip, no matter how deep he may go, or how far he may depart from his side lines, than is included within the boundaries of his end lines on the surface (10). A failure to make the end lines parallel, loses to him his extra lateral rights, and he is confined on the dip to a vertical plane drawn downward from his side line. He may for the purpose of defining or securing his underground or extra-lateral rights, not in conflict with any rights of a prior locator, lay his lines within, upon or across the surface of a prior location (11).

His side lines need not be parallel, but in no event can the width at the wider end of the claim be greater than 300 feet on each side from the center of the vein or lode. It often happens that a locator desires to take an irregular piece of ground, a fraction not occupied by prior locators; this he may do, bearing in mind however that he must, if he wishes to follow his vein on the dip, have two end lines and

that these must be parallel; in order to get the full length of the ledge that is unappropriated he may, as stated above, set his stakes on prior locations for the purpose of making his end lines parallel.

Under the statute of Idaho, five stakes are always necessary to make a valid location, one at each of the four corners and one at the place of discovery, and if there are any angles in the side lines, as many more posts or stakes or monuments as there are angles. There can be no angles in the end lines, they must be straight (12).

In Arizona and New Mexico nine posts or monuments are required, one at each corner and one at the center of each end and side line, and one at place of discovery. In Colorado, seven posts or monuments, one at each corner, one at the center of each end line and one at the place of discovery. In Montana, the same as in Idaho. In Nevada the same as in Idaho. In Oregon seven posts or monuments, one at each corner, one at the center of each end line and one at place of discovery. In South Dakota, nine posts or monuments, one at each corner, one at the center of each end and side line, and one at the place of discovery. In Utah, the same as in Idaho. In Washington, five posts or monuments, one at each corner and one at place of discovery, and

if the claim is covered in whole or part by brush or trees, such brush shall be cut and trees be marked or blazed along the lines of the claim. In Wyoming, seven posts or monuments, one at each corner, one at the center of each end line, and one at place of discovery.

Monuments of stone are often used to mark the boundaries, but the usual monument is a post, sometimes trees or stumps are used when they happen to be located at the proper place to mark a corner or angle. Whatever kind of monument is used it must, in Idaho, be at least four feet high above the surface of the ground, and if a tree or post it must be at least four inches square or in diameter. In Arizona, whether it be stone or a post it must be three feet high. In Colorado, no size is prescribed, they must be substantial and sunk in the ground. In Montana, when a post is used it must be at least four inches square by four feet six inches in length set one foot in the ground, with a mound of earth or stone four feet in diameter by two feet in height around the post. When a stone is used, not a rock in place, it must be at least six inches square and eighteen inches in length, set two-thirds of its length in the ground. In Nevada, when a post is used it shall be at least four inches square or in diameter firmly set in the ground or in a mound of earth or rock and must rise at least three

feet above the surface, if a stone, it shall be at least six inches wide and eighteen inches long set firmly in a mound or in the earth so that at least six inches in height of said stone shall be plainly visible from all sides; a monument of stones shall rise at least three feet above the surface of the ground. In Oregon, if posts are used they shall be at least three feet high above the surface of the ground and not less than four inches square or in diameter; if of earth or stone at least two feet high. In South Dakota they are to be substantial posts sunk in the ground. In Utah, monuments must be at least four feet high above the surface of the ground and when posts or trees are used they must be at least four inches square or in diameter. In Washington, monuments must be at least three feet high, and if posts are used at least four inches in diameter. In Wyoming, substantial monuments of stone or posts sunk in the ground.

Every post or tree must be hewn on the side facing the discovery, and on this hewn place must be marked the name of the claim and the corner or angle the post or tree represents. Nearly every state requires the posts to be hewn and marked on the side facing discovery or the side facing the claim, but not all require the name of the claim; there can, however, be no objection to marking the name on each post, for

example: "*Diana* S. W. Cor." for southwest corner. "*Diana* East Side Line" for an angle in the east side line, or for the center of said line.

3. Location Notice.

It would seem that the orderly manner in which the steps toward perfecting a location should proceed, is *first*, the discovery; *second*, the preliminary notice; *third*, the marking of the boundaries; *fourth*, the posting of the location notice, and this is the order provided in Idaho. In South Dakota, Washington and Wyoming the posting of the notice and the marking of the boundaries may also be at the same time or one may precede the other, the statutes of each of said states providing, that before filing his notice for record, he must post his notice and mark his boundaries; such is also the law of Arizona and Colorado. In Oregon the locator has thirty days after posting his notice to mark his boundaries. In New Mexico the locator marks his boundaries and posts his notice at date of discovery, or under the decisions of the courts within a reasonable time allowed under the preliminary notice to determine the strike of the ledge. In Utah he has thirty days after posting his notice to mark his boundaries. It would also seem from the

reading of the statute in Montana and Nevada that both acts should follow closely upon discovery.

Having marked the boundaries of the claim by establishing monuments as required by law, the next step is to prepare and post the location notice.

At the time of marking his boundaries, he must post at his discovery monument his notice of location in which must be stated: *First,* the name of the locator; *Second,* the name of the claim; *Third,* the date of discovery; *Fourth,* the direction and distance claimed along the ledge from the discovery. *Fifth,* the distance claimed on each side of the middle of the ledge; *Sixth,* the distance and direction from the discovery monument to such natural object or permanent monument, if any such there be, as will fix and describe in the notice itself, the location of the claim; *Seventh,* the name of the mining district, county and state.

From an examination of the above requirements, it will be seen that the first four things required to be stated, are the four matters required to be stated in the preliminary notice posted at the time of making the discovery. These four requirements were discussed at length under that subdivision and need not be taken up again, except to call attention to the

fact that now the boundaries of the claim have been marked on the ground, the direction along the ledge either way from the discovery, which is required to be given under the fourth statement, will be governed and controlled by the monuments erected to mark the boundaries of the claim. The matter required to be stated under the fifth head has also been sufficiently discussed in the preceding pages. It is well to call attention here to the necessity of having the ground which has been staked off, correspond with the length and width claimed in the notice. After the notice is posted and has been recorded it defines the amount claimed, and if the stakes are so set as to include more, they should be pulled in until they correspond with the notice. A claim is not invalid by reason of the fact that the stakes are set out so as to include more ground than the law allows or than the notice claims, unless in those cases where they are set so far beyond the distances claimed that a person cannot, from the description in the notice, find them (13), but no title or right to possession accrues to the locator, to any ground beyond the amount claimed, even though it be within the boundaries as marked on the ground.

The sixth matter to be stated in the location notice is a very important one and a neglect to include it in the notice will render the location void. It fixes the location of the claim, or to use

the expression common among miners, it ties the claim.

The reasons for requiring the claim to be tied are as follows: *First,* to prevent the locator from shifting his claim, or, in other words, to guard against floating locations; *Second,* to enable a person from an examination of the notice itself, as afterwards recorded, to go with reasonable certainty upon the claim.

The claim should be tied with such reasonable certainty, that the locator, having once made his location, cannot move his stakes or change his location so as to cover ground not included within his original location, and so that a person may know from the description in the notice found in the recorder's office where to go to find the claim.

In order to do this, it is necessary that the natural object or permanent monument should be certain and fixed, it will not do to tie to a shifting object, nor to an object that is so large that it offers no guide to one seeking the location. The Supreme Court of Idaho has held that a reference to the mouth of "Big Canyon" is not good, there being no point designated at the mouth of the canyon from which to start (14), also the Supreme Court of Utah says that "five miles south of the Denver and Rio Grande Railroad" is not good, there being no point

designated on the railroad from which to start (15).

A NATURAL OBJECT is any prominent fixed object placed by nature in the landscape, such as a prominent mountain, a canyon, a river, a tree, a bluff of rocks, and any of these objects may be referred to, provided however, the reference to the object be so clearly defined in its relation to the location, that the location may be found with reasonable certainty. Remember what was said above about the mouth of "Big Canyon," some point in the canyon should be designated, also some point on a river bank, some prominent point or peak on the mountain, and if a tree is referred to it should be hewn and marked so it can be easily identified, and the notice should describe it as hewn and describe the marks placed upon it.

A PERMANENT MONUMENT is some object placed permanently in or upon the ground, such as monuments of rocks erected for the purpose of a tie, a shaft, or a well known mining claim. In tying to a patented or well known mining claim the locator is strongly urged to make his tie to some corner or place on the claim referred to, for while the courts have quite generally held that a reference to a patented or well known mining claim is good, yet the failure to tie to some designated point on the claim, has given rise to much litigation, and the locator is

generally required in cases of adverse suit, to show that his reference is such that the claim can be readily found.

Having selected the natural object or permanent monument to which the claim is to be tied, the locator is required to also include in his notice the *course* and the *distance* from the place of discovery or discovery monument to the natural object or permanent monument.

It is just as important that the course and distance be given as that the object or monument should be selected, one is of no value without the other. The distance, whether great or little, of the natural object or permanent monument from the claim, or the place of discovery, is not material, provided the course and distance named in the notice is correct or approximately so, it is well however to select an object as near to the discovery monument as practicable. The object may be within or without the boundaries of the claim.

If the location is in a section of the country where no natural objects or permanent monuments are to be found, the locator should erect a monument of rocks or fix a stake firmly in the ground, mark the rocks or the stake with some letters, or characters, so that it may be identified, and then tie the claim to this monument or stake, in the same manner that he would tie to any other object or monument.

The locator should also give a general description of the locality of the claim by naming the mountain, the canyon, the stream it is on or in, or the distance, and direction from some town or well known point.

The *seventh* matters to be stated in the notice are the Mining District, County and State. If no Mining District has been established covering the locality where the location is made, the locator may use in place of the Mining District the words "Unorganized Territory."

The notice is not required to be in any particular form, the following is recommended as convenient and as complying with the law:

NOTICE OF LODE LOCATION.

To Whom It May Concern:

Notice Is Hereby Given, That *John Doe*, a citizen of the United States, of the age of twenty-one years, having on the *15th* day of *November, 1901*, discovered a vein or lode of quartz in place, bearing *Gold*, within the limits of the claim hereby located, has this day, under and in accordance with the Revised Statutes of the United States, Chapter VI, Title 32, the laws of the State of *Idaho*, and the local rules, customs and regulations of miners, located *fifteen* hundred linear feet of this vein or lode,

with surface ground *three* hundred feet in width on each side from the center of said vein or lode.

Said location is hereby named and shall be known as the *Diana* Lode Mining Claim, and is situated in the *Columbia* Mining District, County of *Boise,* State of *Idaho.*

The place of discovery is evidenced by a monument consisting of a *fir* post, four feet high above the ground and four inches in diameter to which post this notice is conspicuously attached. The claim extends from said monument and notice, along the vein or lode *one thousand* feet in a *northerly* direction and *five hundred* feet in a *southerly* direction.

This claim is located on the *west* side of *Miller Mountain, two miles east* of a point on *Clear Creek* where the *State wagon road* first crosses said creek above the *Payette River,* and a granite rock ten feet high and six feet wide, marked X on the side facing the discovery, bears northeast five hundred feet from the discovery monument. Said claim is bounded on the north by the *Ibex* lode claim, on the west by the *India* lode claim, on the south by the *Triumph* lode claim and on the east by the *Coin* lode claim.

The exterior boundaries of said claim are distinctly marked on the ground by *fir* posts, one being erected at each corner of said claim,

each post being four feet high above the ground, four inches in diameter, and hewn and marked on the side facing the discovery with the name of the claim and the corner it represents.

Name of Locator, *John Doe.*

Dated on the ground this *25th* day of *November, 1901.*

If the person making the location is not a citizen, but has declared his intention to become one, the words, "a citizen of the United States," should be stricken out and these words inserted, "having declared his intention of becoming a citizen of the United States"; so if there are two or more locators, all the names should be inserted at the beginning and signed at the end.

If gold is not the metal found then use in place thereof the proper word, silver, lead, copper, or two or more of these combined as the circumstances warrant.

The description of the kind of monuments used, the directions and distances along the vein or lode from the discovery monument, the general location of the claim, and the tie by reference to some natural object or permanent monument, must be changed to suit the conditions in each individual case.

The prospector and locator is urged to take great and particular pains in the preparation of his notice. Remember that the validity of the location depends upon a substantial compliance with the law, and a little extra time spent in a careful preparation of the notice, will save much worry, and perhaps expensive litigation in the future.

Mining claims may be located by an agent, so that one person in locating a claim may locate for himself and others, or for others without including his own name, and when he so locates, he is authorized to write in the notice and sign at the end of it the names of all those for whom he locates. But no notice must claim more than one location no matter how many locators there are. If it does so it is absolutely void.

The notice being properly prepared, must be posted at the discovery monument.

The notice should be so posted that it can be easily seen and read. It is not necessary nor advisable to spread it out and tack it to the monument, for it is then soon destroyed by the elements. A box, if one is convenient, may be nailed to the monument, and a cover of wood or oil cloth that can be easily raised placed over it, the notice may then be placed in the box where it is protected from the weather; or a tin can fastened to the monument so that the

rain and snow cannot get in, may contain the notice. All that is required is that the notice be posted so that it or the receptacle containing it may be easily seen, and the notice may be readily gotten at for the purpose of reading.

(1) 1899, 5th Ses. p. 440.

(2) Wiltsee v. King of Arizona M. & M. Co., (Ariz.) 60 Pac. 896.

(3) 1899, 5th Ses. p. 440.

(4) Wiltsee v. King of Arizona M. & M. Co., (Ariz.) 60 Pac. 896.

(5) 1899, 5th Ses. p. 440.

(6) Revised Statutes of U. S. Sec. 2324.

(7) Patterson v. Tarbell, 26 Ore. 29.
Lockhart v. Wills, (N. M.) 54 Pac. 336.

(8) Bramlett v. Flick (Mont.) 57 Pac. 869.

(9) Del Monte M. & M. Co. v. Last Chance M. & M. Co., 171 U. S. 55.

(10) Del Monte M. & M. Co. v. Last Chance M. & M. Co., 171 U. S. 55.

(11) Del Monte M. & M. Co. v. Last Chance M. & M. Co., 171 U. S. 55.

(12) Walrath v. Champion Min. Co. 171 U. S. 293-312.

(13) Ledoux v. Forester, 94 Fed. 600.

(14) Clearwater Short Line Ry. Co. v. San Guide, (Idaho) 61 Pac. 137.

(15) Darger v. Le Sieur, (Utah) 30 Pac. 363.

CHAPTER IV.

WORK NECESSARY TO CONSTITUTE VALID LOCATION.

Within sixty days after such location the locator, or his assigns, must sink a shaft upon the lode to the depth of at least ten feet from the lowest part of the rim of such shaft at the surface, and of not less than sixteen square feet area. This is the statute law of Idaho. It is the same substantially in Colorado, Wyoming, South Dakota and Oregon. In Arizona, Montana, New Mexico and Washington ninety days are allowed in which to sink the shaft. In Nevada 120 days, and in Utah $50 worth of work must be done within ninety days.

There is no provision in the statute of Idaho requiring this shaft to be sunk at the place of discovery, the language is "upon the lode." In Wyoming the language is "upon the discovered lode." In Utah "fifty dollars worth of work upon the claim." In all the other states and territories the shaft is referred to as "the discovery shaft."

The apparent object in sinking the shaft is to demonstrate that a well defined ledge has been

discovered, for the law provides that the shaft must be upon the discovered lode. If at the depth of ten feet no lode or well defined crevice is opened up, then the shaft must of necessity be sunk deeper, for it is essential that the lode or crevice shall show in the shaft. This shaft must be ten feet deep from the lowest part of the rim of the shaft at the surface. It is always advisable to sink deeper than ten feet so as to guard against any claim by others that the shaft was not sunk to a proper depth, for the caving of the sides and the accumulation of debris will tend to fill the shaft and lessen the depth.

"Any excavation which shall cut the vein or lode ten feet from the lowest part of the rim of such shaft and which shall measure 160 cubic feet in extent shall be considered a compliance with the law."

The wording of this provision is peculiar, it would seem to mean that a shaft must be sunk but that the shape of the shaft is immaterial so long as it cuts the vein ten feet below the lowest part of the rim and measures 160 cubic feet.

In Colorado the statute reads, "any open cut, cross-cut or tunnel which shall cut a lode at the depth of ten feet below the surface shall hold such lode the same as if a discovery shaft

were sunk thereon," and such is the language in most of the states.

It will be noticed that the wording of Colorado is very different from that of Idaho. In one it reads, ten feet below the surface, and in the other, ten feet below the lowest rim of the shaft.

It would seem to be advisable in Idaho to adhere to the shaft method of doing this work until the Supreme Court of the State has had occasion to construe this law.

The discovery is a fact totally disconnected with this statute requiring the sinking of a shaft. By the discovery of a vein or lode of mineralized rock in place the prospector initiates his title or claim, but the shaft is a part of the process of location. The discovery must be made before the location, but the ten foot shaft is to be sunk after the location. In Colorado it is the discovery shaft and therefore precedes the location, so in other states where it is the discovery shaft.

No location is complete until the shaft is sunk to the depth and extent required by law. Sixty days after location is the time allowed within which to do this work, and the doing it completes the location, and the ground is not subject to relocation for a period of ninety days after the date of location.

Having made a valid discovery, marked the boundaries of the claim, posted the location notice, and sunk a shaft to the depth of ten feet on the lode, the location is complete so far as the law requires anything to be done upon or about the claim, and gives the locator the exclusive right to the possession and enjoyment of the claim for ninety days after the date of location. But ninety days is the limit of his right under the steps so far taken. If he would secure a permanent right to possess and enjoy his claim he must within the ninety days file his notice of location for record. In Nevada the work may be done after the location notice is filed.

CHAPTER V.

RECORDING LOCATION NOTICE.

Within ninety days after the location of the claim, the locator, or his assigns, must file for record in the office of the County Recorder of the county, or of the Deputy Recorder of the mining district in which the claim is situated, a substantial copy of his notice of location. Arizona, Montana, Nevada and Washington also allow ninety days; Colorado and New Mexico three months; Utah thirty days, and South Dakota and Oregon sixty days.

At the time of preparing the notice of location to be posted on the claim it is well to make it in duplicate, for the statute provides that the notice to be recorded shall be a substantial copy of the notice of location. Some of the States provide for more detail in the notice that is filed for record than in the one posted on the claim, but none except Montana and Nevada, which States require a description of the corners and the location and size of the discovery shaft, require a more full and complete notice, even for record than Idaho requires for posting, so that a substantial copy of the form of location notice heretofore given will answer the requirements of any of the mining States.

Before, however, this notice is entitled to be recorded an affidavit must be written on or attached to it and subscribed and sworn to by one of the locators named in the certificate.

The affidavit is required to be in substantially the following form:

State of *Idaho,*
County of *Boise.* } ss.

I, *John Doe, do* solemnly swear that I am a citizen of the United States of America, or (*have declared my intention to become a citizen of the United States*) and that I am acquainted with the mining ground described in this notice of location, and herewith called the *Diana* Lode Mining Claim; that the ground and claim therein described or any part thereof has not, to the best of my knowledge and belief, been located according to the laws of the United States and of this State, or if so located, that the same has been abandoned or forfeited by reason of the failure of such former locators to comply in respect thereto with the requirements of said laws, and that I have opened new ground to the extent or depth of ten feet as required by the laws of *Idaho.*

Signature *John Doe.*

Subscribed and sworn to before me this *23rd* day of *February, 1902.*

It would seem that when the location has been made by an agent, and he is acquainted with the facts required to be stated in the affidavit, that he may make the affidavit, and the courts have so held.

The affidavit must be written on or attached to the notice and subscribed and sworn to at the time of filing it for record or before filing it. In other words, at any time after the location is completed by marking the claim, posting the notice, and sinking the shaft, so that the person making the affidavit is able to swear to the facts required to be stated. The affidavit may be sworn to before any person authorized to administer oaths.

The County Recorder, or his deputy, or the Deputy Recorder for the mining district, a Notary Public, a Probate Judge, a Justice of the Peace, are all authorized to administer oaths and are the officers usually called upon to do this work, but none of these officers are authorized to administer oaths out of the county for which they were elected or appointed, and a Deputy Recorder for a mining district, cannot administer oaths out of his district or a Justice of the Peace out of his precinct.

The County Recorder of each county is authorized to appoint a deputy at any place where he may deem it necessary, and in all places more than twenty miles from an existing office

whenever ten or more mining locators interested, petition for the appointment of a deputy. If the Recorder fails to appoint a deputy for ten days after a petition in writing has been presented to him, the resident miners of the district may appoint one of their number to act as the Recorder, but such appointment by the miners is only temporary, and whenever the Recorder of the county makes an appointment, the authority of the person elected by the miners ceases. The statutes of the several States should be examined on this subject. It is not necessary to discuss them here.

It is important that the Deputy Recorder for the district be legally qualified to perform the duties of the office, else the oaths administered by him and his record may be void, and the loss of valuable claims may be the result. Unless the County Recorder has appointed, the first step to be taken is to petition him in writing to make an appointment. If he fails to do so for ten days after receiving the petition then the miners may elect, provided of course there is no Recorder's office or Deputy Recorder's office within twenty miles. An election without petitioning the County Recorder would be void, and the deputy so elected would have no authority.

The location notice may be filed for record with the County Recorder or with the Deputy

Recorder for the district. The fee for recording, including administering the oath is two dollars, which must be paid in advance. The deputy Recorder is entitled to retain one-half of this fee and must remit the other half to the County Recorder.

The Deputy Recorder of the district must transmit once each month to the County Recorder at the county seat all notices filed with him and not previously transmitted. He must keep a book in which must be recorded all notices filed with him; said book must be indexed with the names of all locators arranged in alphabetical order.

A Deputy Recorder for the district has no authority to perform any official duties except to administer oaths to affidavits attached to mining location notices, record location notices, and to make and certify copies of his record. He must keep a seal but can use it for no purpose except to authenticate certificates attached to transcripts of his record.

The filing of the location notice for record completes all the steps necessary to constitute a valid location; the ground appropriated is now completely withdrawn from the public domain and the locator is entitled to the exclusive possession and enjoyment of all the surface ground included within his boundaries so long as he complies with the law respecting annual

assessment, and in addition he has the right to follow the ledge on its dip, no matter how far it departs from the perpendicular planes of his side lines, and the right also to all other veins or lodes the tops or apexes of which lie within his surface boundaries; but he cannot follow his ledge on its strike beyond perpendicular lines or planes extended downward on the dip through his end lines, and the end lines of the discovery ledge, the ledge on which the location is based, are to be taken as the end lines of all ledges or veins found within the surface boundaries (1). Although, as stated above, he has a right to follow his ledge on its dip, even though it depart from his own claim and runs under another valid location, yet he must do so from his own premises, for he cannot enter upon the surface ground of the other claim for the purpose of working his own.

In South Dakota a certified copy of the recorded certificate must be posted on the claim within ninety days from time of posting the original notice.

(1) Walroth v. Champion Min. Co., 171 U. S. 293.

CHAPTER VI.

PLACER CLAIMS.

All the preceding pages of this pamphlet have been confined to the discussion of lode claims. In many particulars the location of a placer claim follows the general requirements for lode locations, but it is necessary for the guidance of prospectors that a short discussion of placer locations be had here, so that they may thoroughly understand wherein the methods of procedure differ.

A placer claim is a location in which gold or other metalic mineral is found loose in sand or gravel and not in the vein or in place, or in which any other mineral, not known as a metalic mineral is found whether in place or not. Under the latter part of this definition may be included alum, soda, asphaltum, sulphur, borax, mica, slate, gypsum, phosphate, and oil, also building stone and limestone.

All forms of deposit excepting veins of quartz or other rock in place, are subject to entry as placers.

1. Size of Claim.

No placer location can include more than twenty acres to each individual, and in no event can it exceed 160 acres no matter how many locators there may be.

This is construed to mean that one person may locate twenty acres in a single claim, two persons may locate forty acres, three persons sixty acres and so on to 160 acres, which amount may be located as one claim by eight or more persons. It requires eight persons to locate 160 acres, but no larger claim can be located no matter how many persons there may be. These persons must be *bona fide,* or real persons, and the use of names with agreement to reconvey without consideration has been held void as against public policy (1).

On lands on which the government surveys have been made placer claims should be located so as to conform as nearly as practicable with the rectangular subdivisions of such surveys.

It is quite impossible for the prospector to follow this provision of the law except where the sections have been subdivided, therefore, the land office has not enforced the rules, but has allowed the prospector to disregard it, requiring him to locate according to government

surveys only in those sections that are sub-divided (2).

No particular shape or form in which the claim shall be located is prescribed by law, and the prospector may locate in such shape as will be most advantageous to him, provided, however, that he follows the lines of survey on sub-divided sections. It is often of advantage to him in locating along a stream to have a long narrow claim, and on unsurveyed lands he may suit his convenience in this respect, unless there are local rules or regulations of the mining district defining the size of his claim. On surveyed lands, while he must follow the lines of the survey yet he may choose eighty rods in length along the stream and only forty in width or *vice versa*.

As there are no extra lateral rights in a placer claim, there being no ledge to dip beyond the side lines, there is no necessity that the opposite lines should be parallel. It is well however to make them parallel when it can be conveniently done, for should a vein or lode be discovered within the boundaries, and the placer locator apply for a patent on his placer claim with a statement that it contains a vein or lode, his extra lateral rights on such vein or lode would be governed by the parallelism of the lines that crossed the vein or lode.

2. Discovery.

As in lode claims so in placers, a discovery of mineral is essential to a valid location, and, to prevent the tendency to locate placer ground because of its nearness to lode claims, without its having any real value as a placer claim, the general land office has held that the claim must contain mineral in paying quantities (3).

As in lode claims, the discovery must be within the boundaries of the claim as afterwards located.

The discovery should precede the location for the same rule prevails as in lode claims, that the right to locate is founded upon the fact that the prospector has found something to locate.

A separate discovery is not required on each twenty acres where there has been a joint location of 160 acres by an association of eight or more persons (4), and the same rule will prevail as to a claim of forty, sixty, eighty or more acres located by the proper number of persons.

3. Marking the Boundaries.

After making a discovery of gold or other metalic mineral in sand or gravel, or a discovery of oil, soda, sulphur, building-stone, or

other substance the boundaries of the claim should be marked in much the same manner as is required for marking the boundaries of lode claims.

The time allowed after the discovery within which to stake the claim is quite different in the several States, and in those States where no time is fixed by law the same rule prevails as in lode locations, that is, a reasonable time, to be judged by the conditions and circumstances, will be allowed in which to stake. Where no time is fixed a reasonable degree of diligence in perfecting the location must be shown.

In Colorado, thirty days after discovery is allowed. In Washington thirty days, but he must immediately post his notice of location.

In the State of Colorado a preliminary notice such as is required in lode claims is required to be posted at the place of discovery, and the locator is advised, in whatever State or Territory he locates to post a similar notice. By so doing he publicly announces his intention to locate a placer claim and secures to himself a reasonable time to mark his boundaries.

This notice may be very short and concise but should contain the following information: *First,* Name of claim; *Second,* Name of loca-

tor; *Third,* Date of Discovery; *Fourth,* Number of acres claimed.

The following form is suggested:

NOTICE IS HEREBY GIVEN that I, the undersigned, having this *15th* day of *December, 1901*, discovered gold in sand and gravel do hereby claim twenty acres for placer mining purposes under the name of *Gold Bar* placer claim with a reasonable time to complete my location.

Samuel Small.

In those States where a time for staking is fixed, the time may be inserted in place of the words "reasonable time."

As above stated the boundaries are marked much in the same manner as in lode claims. A substantial post or monument should be placed at each corner of the claim. If posts are used they should be at least four inches square or in diameter and four feet high above the surface of the ground, or the size prescribed for lode claims. In Arizona they are required to be four feet six inches high. Stone monuments should also be four feet high.

Unless the State or Territorial law provides otherwise, a stake or monument should be erected at or near the place of discovery, and

to this stake or monument the location notice should be attached. In Idaho the law provides that the location notice may be posted on one of the corner stakes.

Each corner stake should be hewn and marked with the corner it represents and the name of the claim.

All placer claims must be staked or marked, and a failure to stake invalidates the claim. Even where the claim is so located as to conform to the subdivisions of the government surveys, staking is necessary.

Nevada provides that where the claim is so located as to conform to legal subdivisions of the public surveys it need not be staked but there is some doubt as to whether, in such a case, the boundaries of the claim can be said to be marked.

4. Location Notice.

While the several mining States and Territories have through their legislatures given considerable attention to lode locations, and have defined with considerable minuteness and accuracy the steps necessary to perfect a valid claim to lodes or ledges, but very little attention has been given to placer locations, and in most instances, with the exception of two or three sections of a general character, the location of

these claims is governed by the local rules and regulations of miners.

There seems to be no general rule as to when the location notice should be posted, or any well defined knowledge or instruction as to what the notice shall contain. It would seem from the reading of the statutes that in some of the states the original notice posted at the time of discovery is the only notice required, for example; in Montana the law provides that a copy of this notice with additions thereto of description of claim by reference to natural object or permanent monument, dimensions and location of work done, and the location and description of each corner with the markings thereon, shall be recorded within ninety days after posting. In Colorado a preliminary notice is provided for and the permanent location notice is to be posted thirty days thereafter. In Washington only one notice is provided for, the locator having thirty days after posting in which to mark his boundaries, and thirty days from discovery to record with the County Recorder.

None of the other States or Territories specify any time within which the notice must be posted or the boundaries marked. It would necessarily follow, in all the States and Territories having no statute law on this point, that the notice must be posted and the bound-

aries marked at the time of making the discovery, subject of course to the general rule laid down by the courts, that a reasonable time will be allowed the prospector in which to perfect his location.

As heretofore stated, what is a reasonable time depends upon the conditions and circumstances surrounding each case, but the prospector must remain upon his ground, or to use a common expression, stay with it until he has completed the marking of the boundaries and has posted his notice. He will not be allowed to leave the claim before these steps are taken and go off in search of other ground. By so doing he virtually abandons the claim to the first person who takes the steps required by law.

Those states which have laws touching the location of placer claims differ materially as to the contents of the notice. In Colorado, Arizona, Montana, Nevada and Wyoming, the notice is required to state the name of the locator, name of the claim, date of discovery, and number of feet or acres claimed. But in all these states the location certificate which is required to be recorded must contain in addition to the above, a reference to some natural object or permanent monument, and in some of them other additions to the posted notice.

No good reason can be found why the notice to be posted on the claim should not be a full

and comprehensive description of the claim such as is required in lode locations, except in those States where time is allowed after posting the notice to mark the boundaries, and even then the reference to some natural object or permanent monument may be made. In Idaho and Washington the notice posted on the claim is required to be a complete and comprehensive notice containing the name of the claim, the name of the locator, the date of discovery, the dimensions of the claim, the mining district, county and State, the distance and direction to such natural object or permanent monument as will fix and describe the location of the claim. In Washington a reference may be made to legal subdivisions if on surveyed lands, and then no reference to a natural object or permanent monument is required.

Both of these States provide that the recorded notice shall be substantially the same as the posted notice.

While as above stated, the notice to be posted is not required to be as full and comprehensive as the recorded notice, except in Idaho and Washington, yet no harm can be done or rights lost by making it complete, and much trouble and annoyance may be saved by having the posted notice a substantial duplicate of the recorded one.

A meager, loose notice, posted on the claim,

may lead to a contention that the premises claimed in the recorded notice are not the same as those claimed in the posted notice, while if the two notices were substantially alike this contention could not arise.

The following form is suggested as being a sufficient compliance with the law in Idaho and Washington, and good as a posted notice in any State or Territory having general laws on the subject, and as also a sufficient location certificate for record:

PLACER LOCATION.

To Whom It May Concern.

Notice Is Hereby Given, That I, *Samuel Small*, a citizen of the United States, of the age of twenty-one years, having on the *15th* day of *December, 1901*, discovered *gold* in sand and gravel within the limits of the claim hereby located, have this day, under and in accordance with the Revised Statutes of the United States, Chapter VI, Title 32, the laws of the State of *Idaho*, and the local rules, customs and regulations of miners, located *twenty* acres, being *1320* feet in length by *660* feet in width, for placer mining purposes. Said placer location is hereby named and shall be known as

the *Gold Bar* Placer Claim, and is situated in the *Mammoth* Mining District, *Owyhee* County, State of *Idaho*.

This claim is located on the South bank of Snake River, two miles east of Walter's Ferry (if the land is surveyed and subdivided add) *and is the west half of the southeast quarter of the northwest quarter of Section 30, Township 1, South of Range 2 West of Boise Meridian*), and the west bank of Rabbit Creek at the point where it joins Snake River bears east 2000 feet from the monument to which this notice is attached.

The exterior boundaries of said claim are distinctly marked on the ground by *pine* posts, one being erected at each corner of said claim, each post being four feet high above the ground, four inches in diameter, and hewn and marked with the name of the claim and the corner it represents.

Name of locator, *Samuel Small*.

Dated on the ground this *20th* day of *December, 1901*.

In Arizona the posts should be described as being four feet six inches above the ground surrounded by a monument of stones two feet high and four feet in diameter.

The same remarks are applicable here as were made following the notice given for lode claims. The substance discovered, the kind of monuments used, the natural object or permanent monument, the section and division thereof on surveyed ground, must be changed to suit the conditions in each individual case. The reader is referred to the chapter on Location of Lode Claims for a more extended description of these matters.

In Idaho this notice may be posted on any one of the corner stakes. In Montana and Washington it is required to be posted at the place of discovery. In the other States and Territories no place is named at which it shall be posted, but it is proper and perhaps the safest course to post it at the place of discovery or near the discovery. It should be posted conspicuously so that it can be easily seen and read but may be protected from the weather by being inclosed in a box or can as suggested in lode locations.

---

5. Work Necessary to Constitute Valid Location.

Idaho, Montana, Nevada and Washington require a certain amount of work to be done on the claim within a given length of time in order to perfect the location. In Idaho the law pro-

vided that within fifteen days after making the location the locator must make an excavation upon the claim of not less than 100 cubic feet, for the purpose of prospecting the same. In Montana he must within ninety days from date of posting do the equivalent in work of a 10-foot shaft. In Nevada within ninety days after posting perform not less than $20 worth of labor in development. And in Washington, within sixty days from discovery perform labor equivalent in the aggregate to at least $10 for each twenty acres, and file with the County Auditor an affidavit showing the nature and kind of work done.

The other States and Territories have no provisions for work as a part of the process of making a valid location.

---

6. Recording Location Certificate.

A substantial copy of the notice heretofore given, with the necessary changes to suit the conditions and descriptions as suggested, is a sufficient certificate for record, except that in Nevada the notice must include the amount of work done and the place where done.

In Idaho and Montana the location certificate is required to have attached to or written upon it an affidavit, subscribed and sworn to by

one of the locators before it is entitled to record. The affidavit is substantially the same as that required in lode locations; see page 49, and may be sworn to before any of the officers authorized to administer oaths, see page 50.

Change the words given in the affidavit "or depth of ten feet" to read "of one hundred cubic feet" for Idaho; and to read "equivalent to the work required on a lode claim," for Montana.

In Colorado the location certificate must be filed for record within thirty days from date of discovery. In Arizona, within sixty days after date of location. In Montana, within ninety days from date of posting. In Idaho, within thirty days after location. In Nevada, within ninety days after posting, to be recorded with both the District Recorder and the County Recorder. In Washington, within thirty days from discovery. In Wyoming within ninety days with the County Clerk.

Having filed for record the notice of location, the work of perfecting a valid location is complete, and the ground to the extent of the amount claimed in the notice, provided the stakes set to mark the boundaries, include the amount claimed, is withdrawn from the public domain and the locator is entitled to the exclusive possession and enjoyment thereof so long as he complies with the law respecting annual assessment work.

The only state requiring any further steps to be taken is Washington, in which the law requires $10 worth of work to be done on the claim within sixty days after discovery, and an affidavit to this effect must be filed with the County Auditor.

In those States and Territories where district rules and regulations prevail, or where such rules and regulations in any manner add to the statutory requirements, the instructions herein given will apply generally, modified of course as the district rules suggest.

(1) Mitchell v. Cline, 24 Pac. 164.
Durant v. Corbin, 94 Fed. 382.

(2) 20 L. D. 485.

(3) Searle Placer, 11 L. D. 441.

(4) McDonald v. Montana Co., 35 Pac. 668.
Union Oil Co., 25 L. D. 351.

For the convenience of prospectors the following table of length and width of ten, twenty, forty and 160-acre tracts is given:

660	by	660	feet contain	10 acres
1320	by	330	feet contain	10 acres
990	by	440	feet contain	10 acres
990	by	880	feet contain	20 acres
1320	by	660	feet contain	20 acres
1980	by	440	feet contain	20 acres
933⅓	by	933⅓	feet contain	20 acres
1320	by	1320	feet contain	40 acres
1980	by	880	feet contain	40 acres
2970	by	660	feet contain	40 acres
2640	by	2640	feet contain	160 acres
5280	by	1320	feet contain	160 acres
3960	by	1760	feet contain	160 acres

CHAPTER VII.

ANNUAL LABOR.

Having made a valid location of a lode or placer claim by taking the several steps pointed out in the preceding chapters, nothing more is required of the locator during the calendar year in which he made the location, that is, if the location was made and perfected in the year 1901, nothing more need be done to hold the claim during that year.

But in the succeeding calendar year, and each year thereafter, at least one hundred dollars worth of work and improvements, or work or improvements must be made upon or for the benefit of the claim. Except that on claims located prior to the tenth day of May, 1872, ten dollars worth of work or improvements may be made for each 100 feet in length along the vein or lode. The year within which this work must be done or the improvements made, commences on the first day of January of each year next after the location of the claim and ends on the thirty-first day of December of said year, and no claim becomes forfeited for failure to do the work or make the improvements until the expiration of the

last day of the year, and not even then if the locator, or his assigns, has entered upon the claim and has commenced to do the annual labor, or make the requisite amount of improvements, before the year expires; provided, he pursue said work with reasonable diligence until the requisite amount is done. But if the locator fails to do the work or make the improvements required by law, or to go upon the claim and in good faith commence the work before the expiration of the year, his claim is forfeited, the ground reverts to the Government and becomes unappropriated public land, open to relocation. The locator still has an opportunity to rcover his claim after forfeiture, provided it has not been relocated, for the law provided that if the first locator resumes work at any time after the expiration of the year and before any relocation is made, he thereby preserves his claim; or in other words, no other person has any right to relocate after a resumption of work in good faith by the first locator, even though he has failed to perform any work for the period of one year or more immediately before he resumes work.

The locator is urged to take no chances on delays or neglect to do the work. He should not wait until the last day of the year, or allow the claim to be forfeited and open to relocation, taking a chance that others will not molest

the claim, or that he can get there first. If the claim is worth holding, it is worth the annual labor required by law to hold it, and this labor should be performed within the time required.

The Government has granted to the prospector the right to enter upon its public domain, and having made a discovery of mineral, to appropriate to his own use and enjoyment a portion of its land, but it requires as a condition of continued possession, that he shall develop the land so appropriated.

The amount of annual labor required in developing the claim is comparatively small, and every prospector should, in good faith, perform the work required.

Development of the mining resources of the west is what the Government and the several states desire, it is what each miner and prospector should desire, and the practice of locating mining claims for speculative purposes, holding them from year to year with the least possible development work, should be discouraged.

Where Work Must Be Done.

The annual labor need not be done upon the claim, but if done elsewhere, it must be of such character as will tend to develop the claim;

thus a tunnel started outside the boundaries of the location but run for the purpose of tapping the ledge on the claim will count for annual labor; so also it has been held in Colorado that the construction of a wagon road to the claim for the purpose of better developing and operating it, may be treated as a compliance with the law, (1) and the work may be done upon patented ground, (2) or upon adjoining claims; but all work done outside the claim must be done with direct reference to the development of the claim in question, and if the doing of the annual labor is questioned, the burden of proof is on the locator to show that the work was for the development of and did in fact tend to develop the claim.

Work done on the claim may be done anywhere within the lines upon the surface, and anywhere within those lines below the surface.

The locator will readily note the different degree of proof necessary in establishing the fact of the annual work having been done on the claim from that required where the work is done off the claim. In the former case, he has only to prove that one hundred dollars worth of work was done, or improvements made, within the boundaries of the claim; in the latter case he must not only prove that one hundred dollars worth of work was done, or improvements made, but also that it was done

for the development of and as a matter of fact did tend to develop the claim.

If the locator owns two or more contiguous claims, he may perform the work for all upon any one of them, but he must perform as many hundred dollars worth of work, or make as many hundred dollars worth of improvements as there are claims.

Note that the claims must be contiguous, for where two or more claims owned by the same locator or purchaser do not join but lie distant and separate from each other, work cannot be done on one for the benefit of the others. The same rule prevails when several adjoining claims are held in common, work for the benefit of all may be done upon any one of them; the words "held in common" mean, where there are more owners of the claims than one. The claims must be contiguous or adjoining so that each claim may be in some way benefited by the work done on one of them (3).

The claims must be owned in common to entitle the work on one claim to apply on the others. Where adjoining claims are owned by different individuals, work cannot be done on one for the benefit of the others, or to be more accurate, If A owns a claim, and B owns the adjoining claim, A and B cannot do work on A's claim for the benefit of both

claims, of course B may secure a right from A to start a tunnel on A's ground, and may, under that right, do his work in that tunnel, running to tap his own ledge, but in that case it is work done by B outside his own claim but for the purpose of developing his claim and not A's.

Character Of Work.

What Will Count. Any work done for the purpose of discovering minerals is considered as improvements. It may be of any character if it be in good faith intended for the development of the claim. Running tunnels, sinking shaft, building drains to clear the mine or claim of water, timbering, erecting a shaft house, ore house, mill or other necessary buildings on the claim, if done for the benefit of the claim, will count as labor or improvements. So it has been held that where the mine was idle, the labor of the watchman and custodians was within the law (4). If the locator will follow the general rule that the work done or improvements made must be intended in good faith for the development of the claim he will have but little trouble in determining what will count for assessment.

What Will Not Count. A house for the use of miners not built on the claim will

not count (5). And a house built on the claim and occupied as a residence is held not to count (6). Expenses in getting ready to go to work are not work within the meaning of the law, neither can sampling or taking specimens be counted. Personal expenses of the locator in endeavoring to procure water to operate a mill cannot be considered.

These few examples will be sufficient to indicate to the locator what will and what will not count as annual labor.

It makes no difference whether or not the work done or the improvements made have been paid for, it is sufficient if labor of the requisite value be done (7).

In estimating the amount of work or improvements, the test is the reasonable value thereof, not what was paid for it, or what the contract price was (8). And a district rule by which a miner counts more than the value of a day's labor for doing assessment work amounts to nothing. It is the real value of the work done that determines the question. What was the reasonable cost and expense of doing the work or making the improvement?

The same rule as to annual labor applies to both lode and placer claims, and no law, or local rule or regulation that requires a less amount than one hundred dollars on each claim is valid.

As to whether or not it is necessary to do one hundred dollars worth of labor for each twenty acres of a placer claim where it consists of forty, sixty, or more acres is a doubtful question. The Supreme Court of Montana has held that $100 is sufficient on a single claim of 160 acres (9), but the General Land Office has refused to follow this decision. Until this question is definitely settled it is the safer rule to do the work for each twenty acres. The work may of course be done in one place but should be at the rate of $100 for each twenty acres.

In Utah, when work is being done on a group of claims, the person or company doing the work must post a notice on each claim, at the discovery monument stating where the work is being done, and a notice at the entrance of the workings where said work is done, stating the names of the claims for which the work is being done.

Proof Of Labor.

Most of the mining states and territories require that the owner or owners of a mining claim shall make, or cause to be made, an affidavit to the effect that there has been performed upon the claim, or for the benefit of the claim, during the year covered by the affi-

davit, work and labor to the amount required by law, or that improvements to such amount have been made, that is to say, on all claims located since the 10th day of May, 1872, one hundred dollars worth of labor, or one hundren dollars in improvements, and on all claims located prior to the 10th day of May, 1872, ten dollars for each one hundred feet in length along the vein or lode.

In addition to the above the Statute of Idaho requires that the affidavit shall state that all stakes, monuments or trees marking boundaries of said claim are in proper place and position. Idaho requires the locator to set his stakes, or to see that they are in place, once each year. The law contemplates that when he goes upon his claim to do his annual labor he shall also see that his stakes are up and in place.

This affidavit must be filed with the Recorder of the County, or with the District Recorder, within the time provided by law, which time is fixed in the several states and territories as follows: In Idaho and New Mexico, within sixty days after the time set or period allowed for the performance of the work, that is to say, within sixty days after the end of the year; in Colorado, within six months; in Washington, within thirty days; and in Arizona, within three months; in Nevada, within sixty days after the work is performed; in Montana,

twenty days after performance; in Utah, at any time during the year, or within thirty days after completion of the work if completed after the expiration of the year; in Wyoming, within sixty days after completion of the work.

The matter to be contained in this affidavit is provided by statute in the several states, and the locator is referred to the statute of the state in which he is operating to be sure that he has included all that the statute requires.

The following is a form applicable to Colorado, Idaho, and Wyoming.

PROOF OF LABOR.

State of *Idaho*,
County of *Boise*. } ss.

Before me, the subscriber, personally appeared, *John Doe*, who being first duly sworn, says that at least one hundred dollars worth of work was performed or improvements made upon the *Diana* lode mining claim, situate on *Miller Mountain* in *Columbia* Mining District, County of *Boise*, State of *Idaho;* between the first day of *January, 1901*, and the thirty-first day of *December, 1901*. Such expenditure was made by, for, or at the expense of *John*

Doe, owner of said claim, for the purpose of complying with the law and holding said claim.

John Doe.

Subscribed and sworn to before me this *15th* day of *January, 1902.*

John Smith,
[SEAL.] Notary Public.

For Idaho add after the last word before the signature, these words, "and all stakes, monuments or trees marking the boundaries of said claim are in proper place and position."

Arizona, Montana, Nevada, New Mexico and Utah require much more detail in this affidavit. They require that the character of the work done should be set forth, the number of days' work done, the names of the persons doing the work, and in Nevada a description of the part of the claim affected by the work.

These affidavits, if filed within the time required by law are *prima facie* evidence that the work was done.

Two or more claims may be included in one affidavit (10), and the affidavit may be filed at any time after the work is done, even though the year has not expired, provided it is filed before the expiration of the time fixed by law.

The object in requiring affidavits to be filed seems to be to make the record title of the claim complete. Before the law required the filing of proof of labor no complete abstract of title could be given, for, although the record might show that a valid location had been made, it failed to show another very essential matter, to-wit: that the annual labor required by law as a condition to the continued possession of the claim had been done.

The locator is urged to be prompt and careful in making and filing this affidavit as upon it depends the record title of the claim. In Idaho a neglect to file the affidavit is *prima facie* evidence that the work was not done, and in all the states and territories where proof of labor is required to be filed, a failure to file would seem to raise a presumption that the work was not done.

To be of any use to the owner of the claim as evidence of work having been done it must be filed within the time fixed by law. To file it after the time has expired is of no avail, as it could not be used as record proof.

The affidavit need not be made by the owner of the claim, but may be made by the parties doing the work or by any person who is acquainted with the fact that the work is done or the improvements are made.

Forfeiture To Co-owner.

Upon the failure of any one of several co-owners to contribute his proportion of the expenditures required by law, the co-owners who have performed the labor or made the improvements, may, at the expiration of the year, give such delinquent co-owner personal notice in writing or notice by publication in the newspaper published nearest the claim, for at least once a week for ninety days, and if at the expiration of ninety days after such notice in writing or by publication, such delinquent should fail or refuse to contribute his proportion of the expenditure required, his interest in the claim shall become the property of his co-owners who have made the required expenditure (11).

Under this statute, all that can be required of the delinquent owner is his proportion of the amount required to hold the claim, for example, if he owns a one-fourth interest in the claim, one-fourth of one hundred dollars, if a half interest, one-half of one hundred dollars. Where the co-owner who performs the labor does more than one hundred dollars worth of work on the claim, he cannot compel the delinquent owner to pay his proportion of the excess under penalty of forfeiture, as the law above

quoted provides only for the annual labor required by law.

Remember that the delinquent owner has the entire year within which the work is performed or improvements made, in which to pay his proportion, and a service of notice or commencement of publication, before the end of the year is premature.

The delinquent owner has ninety days after personal service upon him, or after the completion of the publication, if the notice is published, within which to pay the amount due from him.

As the law requires the notice to be published for ninety days, and the delinquent has ninety days thereafter to pay, it is seen that in cases of publication it takes six months to oust the delinquent; in cases of personal service, three months.

Where a co-owner is delinquent for two or more years in succession, one notice, naming the successive years for which demand of payment is made, would seem to be sufficient, as also, one published notice will suffice for several delinquent co-owners of the same claim.

Whether or not two or more claims can be included in the same notice has not been decided, but it is not good practice, and the locator or owner is advised not to adopt such a method.

The law does not favor forfeitures and the

provisions above quoted will be strictly construed by the courts, and any irregularity in the proceedings will be taken advantage of to defeat a forfeiture.

No one but a co-owner during the year when the work should have been done, and that a co-owner who performed the work, can take advantage of the failure of another co-owner to perform his share of the work(12). It will thus be seen that one who purchases the interest of the co-owner doing the work, cannot advertise another co-owner out of his title.

The notice of forfeiture is as follows:

NOTICE OF FORFEITURE.

Idaho City, Idaho, Jan. 20, 1902.

To *Hiram Hill*:

You are hereby notified that I have expended one hundred dollars in labor and improvements upon the *Diana* lode mining claim, situate in *Columbia* Mining District, *Boise* County, State of *Idaho,* as will appear by proof of labor filed *January 15, 1902,* in the office of the Recorder of said county, in order to hold said claim for the year ending December 31st,

1901, said sum being the amount required under the provisions of Section 2324 Revised Statutes of the United States. And if within ninety days from the service of this notice (or within ninety days after publication of this notice) you fail or refuse to contribute your proportion of such expenditure as a co-owner, your interest in said claim will become the property of the subscriber under said Section 2324.

John Doe.

If this notice is served personally on the delinquent co-owner, a duplicate of the notice should be retained by the co-owner who has done the work, and the person making the service should attach to such duplicate an affidavit of service giving the date and manner of service. If published in a newspaper, the publisher's affidavit should be obtained and attached to a copy of the notice.

At the expiration of ninety days after service, or publication, if the delinquent has not paid his proportion, the co-owner who caused the notice to be served or published should make the following affidavit:

AFFIDAVIT OF FAILURE TO CONTRIBUTE.

STATE OF IDAHO,
County of Boise, } ss.

John Doe, being duly sworn, deposes and says, that *Hiram Hill,* the person named in the notice of forfeiture hereto attached, wholly failed to pay or tender his proportion of said expenditures during the period of publication of said notice (or at the time of the personal service of said notice) or within ninety days thereafter, or at any time, and has not at this date paid or tendered the same.

John Doe.

Subscribed and sworn to before me this *20th* day of *July, 1902.*

John Smith,
Notary Public.

[SEAL]

This affidavit should be attached to the Notice of Forfeiture, to which has already been added the affidavit of service or publication, and all should be filed with the Recorder of the county.

Having filed these papers with the Recorder, the record of forfeiture is complete and

the title of the delinquent vests in the co-owner who does the work and takes the steps above stated.

In concluding this chapter it cannot be amiss to urge again upon the locator or owner the necessity of having the requisite amount of work done. It will not do to perform a part of the work and plead an intention to do the balance some other time.

One hundred dollars is required on each claim located since the 10th day of May, 1872, and the work must be done or the improvements made. No excuse, except threats or danger of bodily harm made upon or in the near vicinity of the claim will avail, nor will it do to say that someone was hired to do the work, or that a co-owner agreed to do it, or that one holding a bond on the claim stipulated to perform the labor; it is the business of the owner of the claim to see that the work is done, and if the party agreeing to do it fails, the owner must do it himself, or have it done, or forfeit his claim.

Mistakes are not countenanced by the courts, and an honest intention to do the work on the claim is of no avail if in fact the work was done off the claim and was of no benefit in developing the property.

(1) Doherty v. Morris, 17 Colo. 105.

(2) Hall v. Kearny, 18 Colo. 505.

(3) Chambers v. Harrington, 111 U. S. 350.

(4) Lockhart v. Rollins, 2 Idaho, 505.

(5) Remington v. Brandit, 6 Mont. 138.

(6) Moxon v. Wilkinson, 2 Mont. 421.

(7) Coleman v. Curtis, 12 Mont. 301.
Lockhart v. Rollins, 2 Idaho, 505.

(8) Mattingly v. Lewisohn, 13 Mont. 508.

(9) McDonald v. Montana Wood Co., 14 Mont. 88.

(10) McGinnis v. Egbert, 8 Colo. 41.

(11) Revised Statutes of U. S. Sec. 2324.

(12) Turner v. Sawyer, 150 U. S. 578.

CHAPTER VIII.

AMENDED OR ADDITIONAL CERTIFICATES.

If at any time the locator of any mining claim heretofore or hereafter located, or his assigns, shall apprehend that his original certificate was defective, erroneous, or that the requirements of the law had not been complied with before filing; or shall be desirous of changing his surface boundaries, or of taking in any part of an overlapping claim which has been abandoned, such locator, or his assigns may file an additional certificate, subject to the provisions of the act governing location of mining claims, provided, that such amended or additional location does not interfere with the existing rights of others at the time of such amendment or additional location.

This right to amend is recognized in all the states and territories of the west, and the statutes in the several states and territories is worded substantially as above given.

Because of the absence of some definite guide or instruction to the prospector, so that he may know what to do and how to do it, it is very seldom that the first location certificate

is made in conformity with the law; the courses and distances are not accurate, the description of the tie and its bearings are faulty, or some other technical defects exist in his original certificate of location.

The courts and the several legislatures, recognizing the fact that the prospector, by himself, without the aid of a compass or a surveyor, without the law before him, is very likely to fall into error in making his location certificate, have held and provided that he may amend his certificate at any time.

Not only may he amend for the purpose of correcting errors and defects, but he may make an additional certificate for the purpose of taking in new territory, or ground that has become forfeited or abandoned since his original location.

He must have had an original location notice and that notice must have some validity, else he has nothing to amend. It is errors and defects in his original notice that he is entitled to amend or cure by an additional certificate, the law does not contemplate that he may in this way cure a failure to file any original certificate, or put life into an original certificate that absolutely failed to comply with the law. An absolute failure to comply with the law is equivalent to filing no notice at all; for example, if John Doe files a location certifi-

cate in which it is set forth that he has located 1,500 feet on this vein or lode calling it the *Diana* lode, situate in Columbia Mining District, Boise County, State of Idaho, but fails to give any general description of the location of the claim or any description by reference to some natural object or permanent monument so that the claim can be found, he has a void location certificate and it is not susceptible of amendment because it absolutely fails to comply with the law. But if he has described the general location and made a reference to some tie, then, although it may be erroneous or defective, or he may have omitted some detail in the notice, he may amend.

The right to amend is never questioned unless the rights of some other person or persons have intervened between the date of the original and the amended location.

If such rights have intervened, they must not be interfered with in making the amendment. The Supreme Courts of Colorado and Idaho have held that an amendment for the purpose of correcting errors or defects is not an interference with the intervening rights of others, and that it is only where an amendment is made for the purpose of taking in additional ground that other rights are to be respected (1).

Locators and owners of mining claims should examine their location certificates very care-

fully, and if they fail to comply with the law; if anything has been omitted, if the courses or distances are wrong, if the reference to some natural object or permanent monument is not a good reference, an amended or additional certificate should be made and filed at once. This step is particularly essential if a patent is about to be applied for. Of course, if the original certificate is good, there is no use of incumbering the record with an additional one.

In making amended or additional location certificates, the law governing the location of mining claims generally must be complied with, that is to say, the boundaries must be marked, the stakes set, hewn and marked, the notice posted, and certificate filed as provided for original locations, and where the amendment or addition is for the purpose of taking in new ground, too much care cannot be given to these details.

The statutes of the various states provide also, that if the locator desires to take advantage of the present law he may make an amended or aditional certificate.

The object of this provision is to allow one who owns a claim located under a prior law that did not allow the size of claim that the present law allows, to amend so as to take in a full claim as now provided.

AMENDED LOCATION.

NOTICE IS HEREBY GIVEN, That we, the undersigned, citizens of the United States, being the owners of, and in the actual possession of, and having ourselves *and by our grantors*, had, ever since the location thereof, the actual, exclusive, open and quiet possession of the mining claim hereinafter described, within which there is a lode or vein of *gold* bearing quartz, and having ourselves, *and by our grantors*, done all the assessment work required by law to be done during said entire period above mentioned, have this day, and in accordance with, and for the purpose of securing the benefits of the laws of the State of *Idaho*, authorizing amended or additional certificates to be filed, made an amended location, but reserving all the existing rights of and to the said mining claim. This amended certificate is made for the following reasons: That *we* desire to more accurately define the boundaries of said mining claim and to correct any errors or defects there may be in the original location notice and to secure all abandoned over-lapping claims.

The said mining claim is situated in the *Steele* Mining District, County of *Owyhee*, State of *Idaho*, and is, and always has been, called, generally known, and recorded as *Black*

Warrior, being the same lode originally located on the *15th* day of *June, 1898,* and recorded on the *1st* day of *September, 1898,* in book *10* of Mining Claims, page *261,* of the records of *Owyhee* County.

The said claim extends 1500 feet in length along the lode known as the *Black Warrior,* and is of the width of *300* feet on each side of said lode from the center thereof.

The place of discovery is evidenced by a monument consisting of a *pine* post, four feet high above the surface of the ground, and four inches in diameter, said post being located at the same place that the stake containing the original notice of location was situated, and to which post this notice is conspicuously attached. The claim extends from said monument and notice along the vein or lode 750 feet north, 35 degrees east, and 750 feet south, 35 degrees west, and its exterior boundaries are described as follows:

Commencing at corner No. 1, a *pine* post four feet high above the surface of the ground, and four inches in diameter, hewn and marked on the side facing the discovery, "N. E. Cor. *Black Warrior;*" thence north 55 degrees west, 600 feet to corner No. 2, a similar post, hewn and marked on side facing discovery, "N. W. Cor. *Black Warrior;*" thence south 35 degrees west, 1500 feet to corner No. 3, a similar post,

hewn and marked on side facing discovery, "S. W. Cor. *Black Warrior;*" thence south 55 degrees east, 600 feet to corner No. 3, a similar post, hewn and marked on side facing discovery, "S. E. Cor. *Black Warrior;*" thence north 35 degrees east, 1500 feet to corner No. 1, the place of beginning.

This claim is located on the east side of *Boone's Peak*, one mile south of the head of *Bridge Creek*, and a stone monument on the summit of *Boone's Peak* bears north 25 degrees east, 824 feet from the discovery monument. The *Black Warrior* is bounded on the north by the *Queen* lode and on the west by the *Princess* lode, no contiguous claims on the south or east.

Date of relocation, May 10th, 1901.

Names of Locators,

John Hill.
William Mann.

It is advisable in making an amended or additional location to have a surveyor, so that the courses and distances may be accurate.

This notice should be recorded the same as the original.

(1) Frisholm v. Fitzgerald, (Colo.) 53 Pac. 1109.
Morrison et al. v. Regan, Idaho, Jan. Term, 1902.

CHAPTER IX.

RELOCATION OF ABANDONED CLAIMS.

The relocation of an abandoned claim shall be made in the same manner as if the location were of a new claim; but the locator may, instead of sinking a new discovery shaft, sink the original discovery shaft ten feet deeper than it was at the time of abandonment, or he may drive the open cut or tunnel ten feet further along the course of the lead, lode or vein.

In Colorado, Nevada, Washington and Wyoming, the locator may adopt the old stakes or erect new ones, but it would seem from the wording of the statute in Idaho and Montana that he must erect new stakes and cannot adopt the old ones. All the states above named provide that he must erect a new discovery stake, and Oregon provides that the relocation shall be made without any reference to any work previously done on the claim.

In Colorado, Montana, Nevada, Washington and Wyoming the statute provides that the locator may state that the whole or a part of the new location is located on abandoned ground.

It is evident from the above that in making a location of an abondoned claim, all the steps

required for making an original location must be taken. When a claim is abandoned or forfeited, the ground embraced by it becomes again vacant, unoccupied ground and is open to relocation in the same manner as any other vacant mineral land, the only difference being that on abandoned ground the locator may take advantage of the work already done and sink his ten feet in the same shaft or run ten feet in the same cut or tunnel, and may also, in some of the states, adopt the old boundary markings.

The old claim must be actually abandoned or forfeited before any new claim can be located.

No right can be initiated to take effect after the old right expires. A relocation made at any time before the expiration of the year within which the former locator is entitled to do his annual labor is absolutely void, and cannot ripen into a valid claim by actual forfeiture of the prior location, no matter how soon after the relocation this forfeiture occurs.

If the original locator re-enters after the year expires, and commences work before another party enters and makes a relocation, he may hold his claim, provided he completes the full amount of work required with reasonable diligence, and it has been held in California that a resumption of work after a notice of relocation

has been posted, but before the boundaries are marked, will prevent the original location from lapsing (1).

From this decision it would appear that the relocation, to the extent at least of marking the boundaries and posting the notice, must be complete before the original locator enters and begins work. But a mere re-entry by the original locator will not prevent a relocation; to prevent it he must commence work.

The relocator has no connection whatever with the former location and can claim no rights by relation, nor can he adopt any improvements made by the former locator for the purpose of aiding the amount of work required of him.

Where his notice shows on its face that his claim is a relocation, this amounts to an admission that the former claim had a legal existence, and in a controversy between himself and the former locator, the burden is on him to show forfeiture.

An abandoned or forfeited claim is open to relocation by any person entitled to locate mining claims, except the owner of the abandoned claim. His only right is to resume work. Any construction by which the person in default is allowed to relocate would defeat the intent of the law, and would permit him to hold from year to year simply by relocating, and without performing any labor.

A claim is forfeited by reason of the failure of the locator, or his assigns, to do the annual labor thereon or make the necessary improvements, or to comply with the requirements of the law or the rules and regulations of miners in the district. A claim is abandoned whenever the locator, or his assigns, leaves the claim with no intention of returning or of resuming work upon it.

An abandonment may occur at any time during the year, but a forfeiture can only occur at the expiration of the time fixed by law for performing the work or complying with the rules and regulations.

It will thus be seen that in cases of abandonment it is not necessary to wait until the expiration of the year to make a relocation. But great care must be taken in this matter and the proof of abandonment must be positive and conclusive. If a locator leaves his claim and states in the presence of witnesses that he intends to abandon it, and will never return to the claim again, or that he wants nothing more to do with it, or some remark which shows conclusively that he has thrown it up, or if he deserts it for several years in succession without doing anything, then a prospector is reasonably safe in relocating. Of course in the latter case it would also be a forfeiture.

(1) Pharis v. Muldoon, 75 Cal. 284.

CHAPTER X.

MILL SITES.

The law provides that where non-mineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such non-adjacent surface ground may be embraced and included in an application for a patent for such vein or lode. But no location hereafter made of such non-adjacent land shall exceed five acres.

An owner of a quartz mill or reduction works, not owning a mine in connection therewith may also receive a patent for his mill site.

It is not the intention of the writer to discuss the subject of patents in this work. If a patent is desired the services of an attorney should be secured. The above extract from the Revised Statutes of the United States is given to acquaint the prospector with his rights as regards mill sites.

A mill site must be located upon non-mineral land, that is upon land that has so little mineral in it that it is not profitable to work it for the precious metals it may contain, for in all these mining States it would be practically im-

possible to find any ground that did not contain minerals in some quantity.

It must not be contiguous to the vein or lode owned by the locator, and it is well to add that it should not join the end line of any vein or lode, for, if it should, the mineral character of the ground would be presumed, and great difficulty would be experienced in proving it to be non-mineral, but if such proof can be made, the location is good. The same remarks are applicable where it joins the side line of a lode claim, except that the proof of its non-mineral character is much more easily obtained.

A mill site cannot exceed five acres in area; it may be located in any form or shape that is most convenient for use in connection with the lode claim. Only one mill site can be taken with each lode claim.

There are two classes of mill sites that may be located. *First*, those located by the proprietor or owner of a lode claim to be used for mining or milling purposes in connection with said lode; *Second*, those located by the owner of a quartz mill or reduction works not owning a mine in connection therewith.

In the first class the mill site must be used for mining or milling purposes in connection with the lode claim. The location of a mill site in connection wth a lode claim, without making any use of it, is unauthorized, and the mill

site cannot be held. It must be used for mining or milling purposes, and if so used it is not necessary to perform any annual labor on it. The annual work on the lode claim will hold the mill site. Any use that has direct reference to the work done on the lode claim would seem to be sufficient; thus, the erection of dwellings thereon for the workmen engaged at the mine; the building of a storehouse wherein are kept shovels, picks, powder, drills and other tools used at the mine; the erection of waterworks thereon to supply water for the mine; or works for pumping the mine, have been held a sufficient use in connection with the lode claim. On the other hand, it has been held that the location of a water right on a mill site and a canal dug to conduct it to the mine is not a sufficient use, neither is the cutting of timber for mining purposes a sufficient use. The owner of a mill site is entitled to use the timber thereon for mining purposes, but the cutting and taking it off does not constitute use of the claim for mining or milling purposes.

Under the second class, the claimant must be the owner of a quartz mill or reduction works situate on the mill site.

A mill site is a mining claim and the owner thereof has the exclusive possession thereof the same as he has of any other character of mining claim.

In the first class, as the mill site is located as an appurtenance of the lode claim, it is evident that a forfeiture or abandonment of the lode claim also forfeits or abandons the mill site.

Mill sites should be staked by placing a post or monument at each corner or angle. These posts or monuments should correspond in size to those required for lode claims, and should be marked with the name of the mill site and the corner or angle represented by the post or monument.

As there is no mineral in the ground so located, there is no necessity that time should be given, consequently no preliminary notice should be posted, but at the time of staking there should be erected in a conspicuous place upon the claim a monument, to which should be attached a location notice which may be in the following form.

MILL-SITE LOCATION.

To Whom It May Concern.

Notice Is Hereby Given, That I, *John Doe*, a citizen of the United States, and the owner of the *Diana* lode mining claim, situate in the *Columbia* Mining District, County of *Boise*,

State of *Idaho,* have this day located, and do hereby claim the right to the possession and enjoyment of all that tract or parcel of land, not exceeding five acres, situate in said *Columbia* Mining District, County and State aforesaid, bounded and described as follows, to-wit: Beginning at corner No. 1, a *fir* post four feet high above the surface of the ground and four inches in diameter, hewn and marked on side facing the claim, "N. E. Cor. *Diana* Mill-Site;" thence west 466 2-3 feet to corner No. 2, a similar post, hewn and marked on side facing the claim, "N. W. Cor. *Diana* Mill-Site;" thence south 466 2-3 feet to corner No. 3, a similar post, hewn and marked on side, facing the claim, "S. W. Cor. *Diana* Mill-Site;" thence east 466 2-3 feet to corner No. 4, a similar post, hewn and marked on side facing the claim, "S. E. Cor. *Diana* Mill-Site;" thence north 466 2-3 feet to corner No. 1, the place of beginning. This claim shall be known as the *Diana* Mill-Site, and shall be used by the owner of the *Diana* lode claim for mining and milling purposes. This notice is conspicuously attached to a monument erected on said claim at a point 200 feet southwesterly from the N. E. corner of the claim. A pine tree, 2 feet in diameter, hewn and marked W on side facing the claim, bears north 500 feet from notice stake, and the S. W. corner of *Diana*

lode claim bears northeast 1000 feet from said stake.

Date of location January 10th, 1902.

John Doe.

Nevada provides that this notice shall be recorded within thirty days after location. The other States have no law on the subject, but thirty days would seem to be a reasonable time.

The claim should be tied the same as lode and placer claims, and as indicated in the above notice.

The mill site need not be located at the time of making the lode location, but may be located at any time thereafter.